IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 447 of 2001
with
CIVIL APPLICATION No 12170 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INOX INDIA LTD

Versus

IDBI BANKL LTD

Appearance:
1. Appeal from Order No. 447 of 2001
MR GN SHAH for Petitioner No. 1
MR MAHESH THAKAR for Respondent No. 1
DS AFF.NOT FILED (N) for Respondents No. 3-4
MR SUNIT S SHAH for Respondent No. 2

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 31/01/2002

C.A.V.JUDGEMENT

1. With the consent of the learned advocates, the

matter is heard finally.

2. The original plaintiff has filed this appeal from order under Section 104 and Order 43 Sub-clause r of the Civil Procedure Code against the order of 8th Jt. Civil Judge (S.D.), Baroda passed on 7.11.01 on exh. 5 dated 24.10.01.

3. The brief facts leading to the filing of this A.O. are as under :

The appellant had filed Special Civil Suit No. 906 of 2001 against the respondents in the court of 8th Jt.Civil Judge (S.D.) at Baroda on 24.10.01 for declaration and the injunction to the effect that the Certificate of Seaworthiness obtained by respondent no. 2 was fraudulent and for an injunction restraining the respondent no. 1 from making payment to the bankers of respondent no. 2. The respondent no. 1-IDBI Bank Ltd. against whom the injunction was sought had filed its reply exh. 12 on 2.11.01 in the Court. The respondent no. 1-bank which had opened a Letter of Credit (L.C.) at the instance of the appellant in favour of respondent no. 2 namely M/s Chimmasheexport Ltd. The respondent no. 3 is the agent of Blue Bay Enterprise, the carrier and Respondent no. 4 is the Indian Shipping Agent of the carriers. The appellant had a sub-contract dated 19.8.99 with Mecon Limited, a Government of India company to source and procure various equipments abroad from various vendors. The order with respondent no. 2 was for two liquid Nitrogen Tanks worth US $ 806856 equivalent to Rs.387.28 lakhs. The appellant is the importer and therefore the Letter of Credit was opened in favour of respondent no. 2 by the appellant on 26.11.00. The essential condition of the L.C. was to produce a Lioyd's Certificate that the steamer carrying the equipments was seaworthy and not more than 15 years old. This condition was amended on 16.6.01 and 24.8.01 and clause no. 46(a) point no. 9 to provide from Agent of Carrier, Certificate that the Carrier steamer would be seaworthy and not more than 25 years old. The appellant states that the goods were shipped in vessel "NABIL Z" from the port of Ilyichevsk in Urkaine and which ship was about 35 years old. The appellant was informed by fax by respondent no. 4, agent on 16.10.01 that the said shipping "NABIL Z" had sunk off the coast of Yemen near Mokha and the total cargo was lost. In view of this fraud committed by respondent no. 2 in complying with an important condition of the Letter of Credit about the seaworthiness and age of the ship and the legal predicament the appellant had been obliged to file suit

on 24.10.01 for a declaration and permanent injunction in the suit. In the said suit, application exh. 5 was filed against the respondents and notice was issued by the trial Court returnable on 1.11.01. The injunction was sought for restraining respondent no. 1 from handing over the amount to respondent no. 2 or its agents bankers in India or abroad. It is the case of the appellant that goods worth Rs.387.28 lakhs had been lost at sea as the ship "NABIL Z" has sunk. The respondent no. 2 is likely to demand the amount of Letter of Credit any time from respondent no. 1 and hence it was imperative to file the suit and obtain an injunction. The main point contended by the appellant in the suit was to prevent respondent no. 1 from handing over the amount of Rs.387.28 lakhs to the respondent no. 2 in view of the fraud committed by respondent no. 2 and its shipping agent respondent no. 3 by giving false certificate of seaworthiness to the effect that the ship "NABIL Z" was seaworthy and not more than 25 years old. It was ascertained from the Lioyd's Register of shipping and from the letter received from respondent no. 4 that the ship was more than 35 years old having built in 1965. The learned Judge by his order dated 7.11.01 had held that notwithstanding the fact that appellants are innocent victims of fraud committed by respondent no. 2 on respondent no. 1, through its bankers by sending goods through a ship which was more than 25 years old as required by the Letter of Credit, prima facie the appellant had pleaded and proved the fraud in the Letter of Credit committed by respondent no. 2 & 3 by giving the false Seaworthy Certificate to respondent no. 1.

4. It is the case of the appellant that Special equity existed in favour of the appellant by reason of respondent no. 2 having committed fraud in non fulfilling an essential condition of the Letter of Credit from respondent no. 1. The fraud practised on respondent no. 1 in obtaining the Letter of Credit from respondent no. 1 in as much as goods were dispatched in a ship which was more than 35 years old even though it was stipulated in the Letter of Credit that the goods should be shipped in a ship which was not more than 25 years old. The respondent no.1 had appeared before the trial court and argued the matter. Therefore, the injunction was not exparte.

5. Mr.B.J.Shelat learned counsel appearing for Mr.G.N.Shah L.A. for the appellant further submitted that the tenor of the L.C. should be seen. In this L.C., it is clearly stated that the ship should be seaworthy and it should not be more than 25 years old.

In the circumstances, it is the duty of the respondent no. 2 to see that the goods should be shipped in terms of the condition as laid down in the L.C. and accordingly it should reach to the destination. The respondent no. 3 is the carriers agent i.e. agent of the appellant. The facts of this case can be termed as rarest of the rare case and that by allowing this A.O.. the parties should be directed to maintain status-quo as it is today i.e. the respondent no.1-bank should not part with money on behalf of the appellant and further direct the counter part not to part with the money. Admittedly the goods are not received by the appellant. It is the case of fraud as contemplated under Indian Contract Act and not as per the Indian Penal Code. The facts of this case are not similar to the case of Prem Conductors Pvt. Ltd. V/s State Bank of India reported in 1999(1) G.L.R. 118. The documentary evidence is on the record and the case is made out for the injunction as prayed for. At the most this court should direct the trial court to expedite the suit i.e. to dispose it of within 3 months so that parties without delay can get proper justice. It has come to knowledge that the ship was more than 35 years and that the ship "Nabil Z" was manufactured in 1964 and accordingly it was not seaworthy. Even the Lioyd's Register says that it is above 25 years old and it is not seaworthy. As per the terms of contract, as soon as delivery is made, the payment is to be made. However, goods are not received and therefore the question of payment does not arise at all.

6. It is true, runs the submission of Mr.Shelat for the appellant, that courts should not interfere in banking transactions particularly when foreign authorities are involved but there are two exceptions to this rule a) fraud and (b) irretrievable loss. In this case, the appellant has successfully shown the documents produced on record that the fraud is committed by the respondents no. 2 to 4 and therefore inspite of the fact that the fraud has been successfully proved, if the payment is made by the respondent no. 1 IDBI-bank to the appellant herein, irretrievable loss in terms of money would be caused. In the present case, negotiating bank i.e. the International Moscow bank has not made any payment to the seller of the goods i.e. the respondent no. 3 and accordingly on account of discrepancy found in the document produced before the L/C opening bank i.e. respondent no. 1-IDBI-bank, payment is not made to the present appellant/original plaintiff. Therefore, as such there is no money transactions between the parties and accordingly if the injunction is granted, no harm would

be caused to the respondent no.2 herein.

7. So far as the Uniform Customs and Practice for Documentary Credits (UCPDC) rules are concerned, the learned counsel submitted that the said rules are not applicable to the facts of the case in view of the binding decision of the Apex Court in case of Federal Bank Ltd. V/s V.M.Jog Engineering Ltd. reported in AIR 2001(1) S.C.C. pages 663. Shri Shelat further relied on Chapter 37 which is in respect of Documentary Credits-General as appears in book of Paget's Law of Banking 11th Edition 1996 and drew my attention to the various observations made in the said chapter. Lastly, it was submitted by Mr.Shelat learned counsel for the appellant that no harm would be caused to the present appellant by the respondent no. 2 if injunction is granted against respondent no. 1 for parting the money of L.C. and further prayed for the order of expediting the suit. In support of his submissions, Mr.Shelat relied on the following authorities :

1. U.P.State Sugar Corporation V/s Sumac International Ltd. reported in AIR 1997 S.C. 1644.
2. Prem Conductors P.Ltd. V/s State Bank of India reported in G.L.R. 1999(1) page 118.
3. Adani Exports Ltd. V/s Hindustan Organics Chemicals Ltd. reported in G.L.R. 2000(3) page 2759.
4. Federal Bank Ltd. V/s V.M. Jog Engineering Ltd. reported in AIR 2001(1) S.C.C. 663.

8. Against the aforesaid submissions, Mr.Mahesh Thakar L.A. for the respondent no. 1- IDBI Bank submitted that the respondent no. 1-bank has, at the request of the appellant, opened a Letter of Credit in favour of respondent no. 2 who is the exporter to facilitate the appellant's import from the respondent no. 2 for their business. The Deutche Bank was acting as a negotiating bank as the respondent no. 1-bank was not having branch in Moscow where the respondent no. 2 is situated. The transactions pertaining to L.C. are governed by Uniform Customs and Practices published by the International Chamber of Commerce. Under the L.C., the bank opening it undertakes an independent obligation that if documents as mentioned in Letter of Credit are produced and there are no discrepancies then the opening bank shall effect payments of drawings thereunder. On the application given by the appellant on 20.9.00, the respondent no. 1 -bank opened L.C. in favour of respondent no. 2 wherein it was stipulated that the

respondent no. 2 would supply two numbers 130 M3 Liquid Nitrogen Tanks for which purchase order was placed by the appellant. The respondent no.1-bank had undertaken the obligations to make payment under its L.C. subject to the receipt of the documents in compliance with the said L.C. It is a settled principle enunciated under the said UCPDC that in a Letter of Credit transaction, the bank deals in documents not in goods. In the plaint, the appellant has raised an issue of seaworthiness of the ship. The issue raised by the appellant is arising from the exclusive dealing between the appellant and the respondent no. 2 and the respondent no. 1 is not in a position to nor expected to adjudicate on such matters. The bank as per the contractual obligations narrated above is to make payment as per the documents in case of no discrepancy, will be guided by the orders of this Court.

9. Against the aforesaid submissions, Mr.S.S.Shah L.A. for the respondent no. 2 submitted that what is ordinarily meant by fraud is not to be applied for fraud for Documentary Credits. Fraud should be in the transaction because L.C. is issued pursuant to contract. In such circumstances, third party payment cannot be stopped. Irretrievable loss in the sense, ultimately person at whose instance L.C. is opened succeeds in a dispute. It is a degree higher than irreparable loss. The Lioyd's Register which is produced is not in dispute. L.A.Mr.Shah took me to the terms of the contract between the present appellant and the respondent no. 2 which is from page 22. Initially, they were to make payment of freight. They increased the price and the respondent no. 2 had to bear it. Ex-price + freight and now they have included freight and increased the price. They wanted to defer the payment. The contention of motive is totally misconceived. To an extent they are at a benefit and the respondent no. 2 is at a loss. It is not disputed in plaint and written statement that this contract was extracted out of fraud. the appellant do not dispute that contract is genuine. The respondent no. 2 did manufacture and shipped the goods. Therefore, it cannot be said that the respondent no. 2 had any fraudulent intention more so 45 days credit is given to the respondent no.-1-bank. Whether any person with fraudulent intention would agree to such a condition? The answer is in the negative. If L.C. is not obtained with fraudulent intention, injunction cannot be granted. Neither contract nor L.C. is said to have been obtained fraudulently.

10. According to Mr.Shah L.A. for the respondent no.

2 who could certify the age of the ship and seaworthiness? Either the Lioyd's or Carrier's Agent can certify it. Regarding seaworthiness, carrier's agent can certify and owner can also certify. It is inspected by the port authorities. These certificates are not within the control of the respondent no. 2. It is not on account of age that the irretrievable loss is caused. The apprehension of 25 years is ill-founded. Ship did not sink because it was unseaworthy. There is no certificate produced to show that because of unseaworthiness, the ship sunk. The condition of 25 years of age in L.C. is important because of the insurance policy. The insurance policy does not exclude liability of 25 years of age i.e. the only apprehension of the appellant.

11. By taking me to the various articles of UCPDC, more particularly Article 9, it is submitted that the bankers have not raised any contention raised by the appellant. Relying on the fax message which is produced on page 116, Mr.Shah submitted that generally time is mentioned in the fax message but here it is not shown. It is dated 27.11.01 whereas it is received on 30.11.01. Only after the process is served, they referred to October in the letter. The fax message which is received is not clear on the point who has signed the document for Transship Ltd. It does not seem that the fax message is issued by them. It is not necessary that surveyor should issue the certificate of seaworthiness. Agents can also issue certificate.

12. L.A.Mr.Shah for the respondent no. 2 stated that the legal position is clear that :

a) Fraud should be by the seller.
b) Fraud should be in inducing original contract and issuance of Letter of Credit and bank guarantee.
c) Bank must have knowledge. The trial is always available but after making the payment. No injunction as prayed for can be granted.

13. The goods which were ordered were manufactured and loaded on the vessel. The only grievance is that ship was not below 25 years of age. Accordingly it was not seaworthy. Therefore, it cannot be said that fraud is committed and if it is not a fraud, no injunction can be granted. Further, so far as respondent no. 2 is concerned, he is not a party to the fraud. For this purpose, Mr.Shah has relied on the following authorities:

a) Independent Television Company Pvt.Ltd. V/s M/s

Monica Electronics Ltd. & Anr reported in 1996(1) Bank C.L.R. 611

b) M/s SAW Pipes Ltd. V/s Gas Authority of India Ltd. reported in 1999(2) Bank C.L.R. 42

c) D.L.F.Cement Ltd. V/s Inspector of Police P.S. Panjagutta, Hyderabad & Ors. reported in 1999(1) Bank C.L.R. 728

d) K.K.Usha V/s Mrs. Kurivilla reported in 2000(2) Bank C.L.R. 635

14. Mr.Shah submitted that the position is clear that once the L.C. is issued and there is no discrepancy in the documents received by the issuing bank from the negotiating bank, the payment must be made as per the L.C. irrespective of the fact that whether the payment is made by the negotiating bank or not. In view of the aforesaid facts, no injunction as prayed for can be granted and the respondent no. 1-bank be directed to make the payment to the respondent no. 2 herein.

15. I have perused the various authorities cited by the learned advocates of both the sides as well as all the papers pertaining to this appeal from order. The L.C. is given by the I.D.B.I-respondent no. 1 herein to Deutsche Bank, Moscow and it is given on behalf of the opener of the L.C. The seller happens to be the respondent no. 2-Chimmanshexport Ltd. who is the beneficiary of the L.C. The buyer-appellant entered into negotiation with the respondent no. 2 for purchase of goods and accordingly the said contract has been finalized between them. One of the said contract terms is to open Irrevocable L.C. The buyer i.e. the appellant signs the L.C.opening contract with his banker i.e. the respondent no. 1 herein. In such L.C. opening contract, the buyer mentions that the documents such as Bills of Exchange, Invoice, Insurance Policy, Origin Certificate, Bill of Lading-shipping documents and other different certificates. The buyer gives the L.C. opening contract to his banker and based on that, his banker opens/establishes L.C. on Seller's bank i.e. foreign bank. The buyer's bank has to mention all the documents mentioned in his L.C. The buyer's bank establishes L.C. contract in favour of Seller's bank. Thus, the buyer has to contract with seller for the sale of goods and equally he has to get contract with his bank for issuance of L.C. and in turn the buyer's bank has to contract with seller's bank by opening of L.C.

16. In light of the aforesaid discussion, if we peruse the copy L.C., it shows the name of buyer-appellant, beneficiary-seller. The appellant's bank is I.D.B.I. bank- the respondent no. 1 herein and the beneficiary's bank is Deutsche Bank, Moscow. Apart from the various details shown in the L.C., it also mentions the documents required out of which one is Lioyd's Certificate that the carrying steamer is seaworthy and not more than 15 years old. Thereafter, three amendments took place in the said L.C. with the consent of the parties. We are more concerned with the clause 46-A point 9 which reads as " Agent as carrier certificate that the carrying steamer is seaworthy and not more than 25 years old" which came into effect. It also appears that after the papers were received by the buyer's bank i.e. I.D.B.I. bank-respondent no. 1 from Deutsche Bank, Moscow, the following discrepancies were found by the I.D.B.I.bank which were conveyed by fax dated 20.10.01 to the Deutsche bank as under :

" 77J. Discrepancies

We have received your captioned document on 15th October, 2001 and on scrutiny following discrepancies were noticed.

+ Consignee in Bill of Lading and Invoice differs
+ Consignee in Bill of Lading and Certificate of Quality, Certificate of Origin, Packing List differs.
+ Name and address of Foreign Buyer in Certificate of Quality and Packing List not as per LC terms.
+ Agent of carrier certificate is undated.
+ Name of the purchaser in Manufacturer Test Certificate is not as per LC terms.
+ Contract number mentioned in the Manufacturer Test Certificate inconsistent with Contract number as mentioned in other documents.
+ Addition/Alteration in Manufacturer Test Certificate is not authenticated.
+ Evidence for complying condition no. 47A (regarding final set of Technical documents) not submitted.
+ Signatory to the Bill of Lading is shown as both Master and Agent of the carrier. Hence identity of issuer not clear.
+ Condition no. 47A-3 (All documents must be drawn in English only) of the LC not complied with.

Meanwhile please do not claim reimbursement as per LC terms."

77B. Disposal of Documents

Rec/in the meantime, we hold the documents entirely at your risk and disposal."

From the aforesaid discrepancies, it is clear that the buyer's bank i.e. I.D.B.I.-respondent no. 1 herein opened the L.C. in favour of the beneficiary on behalf of the buyer-appellant and holding all the documents entirely at the risk and disposal of Deutsche bank, Moscow. Clause 72 also speaks regarding refusal of documents in accordance with article 14 of UCPDC 500. It further speaks that "we have treated the documents purely on collection basis and outside the LC." Under the circumstances, till the clarification is received from the beneficiary bank, the question of making the payment of LC by the respondent no. 1-I.D.B.I. bank to the respondent no. 2 does not arise. As per the agreement, the terms of delivery was from FOB Russian Port to CFR Chennai Port of the goods i.e. 2 nos. 130 Cubic Meter Liquid Nitrogen Tanks as per purchase order from Ilyichevsk sea port to Chennai Port.

17. It is the case of the respondent no. 2 that the seaworthiness certificate was required to be issued by Lioyds but by the subsequent amendment the certificate was issued by Tranship Ltd. as agent of carrier Bluebay Enterprises SA. The certificate says that the steamer M/V "Nabil Z" is seaworthy and not more than 25 years old. The Certificate of Origin issued by Russian Federation also in Clause 11 certifies that the declaration at clause 12 made by the exporter is correct which is as under : " The undersigned hereby declares that the above details and statements are correct; that the goods are of origin of the country shown in box no. 5, that the goods are exported to India." Therefore, there is a reason to believe that whatever done at the Russian end is done as required. Therefore, there is no reason to doubt any certificate produced for payment at the I.D.B.I.Bank-respondent no. 1. The goods were shipped on board on 24.9.01 as appears from the Bill of Lading no. 1. The respondent no.2 Chimmanshexport Ltd. also issued certificate dated 24.9.01 stating that the goods were supplied as per the contract.

18. It is the case of the appellant that UCPDC is not applicable to the present case. In support of his submissions, the learned counsel Shri Shelat has relied on the binding decision in case of Federal Bank Ltd. (supra). I am of the opinion that the above case is applicable to the present case. In view of the purchase order no. U4-BA-IMP-2000-7003 dated 8.9.00 wherein on page 2 in clause 3.7 it is mentioned that "The Letter of

Credit is to be subject to the Uniform Customs and Practice for Documentary Credits(1993 Revision)." Therefore, UCPDC is applicable to this case. In case of Federal Bank Ltd. (supra), articles 4,10,11,15,16,17,23,46 to 48 of UCPDC are interpreted. It is further observed that it is the bank's duty to take reasonable care to scrutinise the documents produced before it for hounouring letter of credit as governed under UCPDC rules.

19. The learned counsel Shri Shelat for the appellant has produced Chapter 37 on Documentary Credits: General of Paget's Law of Banking 11th Edition 1996. This Chapter shows that the UCPDC Revision (UCP 400) was adopted by banking associations and individual banks in more than 160 countries. The UCPDC are incorporated in (a high percentage of) all letters of credit handled by British banks, both inward and outward. In short, I am of the opinion that UCPDC 1983 (UCP 400) and 1993(UCP 500) is applicable to the facts of this case. Article 13 of the UCPDC (500) is regarding the standard of examination of documents whereas Article 14 is regarding the description of documents and notice. Both these articles are much applicable to the facts of this case. Keeping in mind the articles 13 & 14, if we look to the papers of L.C. produced by the I.D.B.I. bank, in column 77J the discrepancies are shown which I have referred in para 16 above. Clause 77B is very specific about the documents entirely at the risk and disposal of negotiating bank-Deutsche Bank. From the aforesaid discussion, I am of the opinion that the issuing bank i.e. I.D.B.I. bank-respondent no. 1 herein on receipt of the documents found the discrepancies for which clarification was sought from the negotiating bank. It is an admitted position that the negotiating bank has not paid any amount to the seller of the goods i.e. the respondent no. 2 herein and at the same time, due to the discrepancies in the documents sent for payment, the issuing bank I.D.B.I. bank also has not authorised the payment to the banker of respondent no. 2 -herein and accordingly both the banks have not made the payment to the seller of the goods i.e. the respondent no. 2-herein. Therefore, it is a good case for trial.

20. It is the case of the appellant-buyer of the goods in India that though the ship "Nabil Z" was not seaworthy on account of more than 25 years old, the respondent no. 3 Tranship Ltd. of Odessa, Ukraine issued certificate that the ship is less than 25 years and seaworthy. A hue and cry was raised regarding the Tranship Ltd. letter produced at page 116 of the paper

book. It says that the certificate of seaworthiness which, according to the appellant, was issued by the Transhipp Ltd., was not issued by them. It further says that there was no any request from neither party nor ship owners to issue the certificate of seaworthiness of the vessel. It further says that Transhipp Ltd. has no possibility to issue such certificate by no means as Transhipp is not the surveyor company or classification society. Therefore, they strongly denied that their company issued any certificate of vessel's seaworthiness or certificate of the age of the vessel. So far as this letter Exh. 116 is concerned, it is the copy of fax message to the Court of Civil Judge (S.D.), Vadodara by Transhipp Ltd. and copy thereof to the appellant, respondent no. 2 & 4 etc. on 27.11.01. It is the case of the advocate for the respondent no. 2 that if it is a fax message there must be time mentioned and phone number on the top of the message. It is also not shown who has written this letter or what is the capacity of the signatory who has signed it. There are letters produced on the record to show that the seller company also issued the certificate of seaworthiness or certificate of age of the vessel. Therefore, in my opinion it appears that some mischief has been played by Transhipp Ltd.-the respondent no. 3-herein who has issued the certificate of seaworthiness and age of the ship. This mischief played by the respondent no. 3 may or may not be in the knowledge of respondent no. 2 and 4. Now so far as the age and seaworthiness of the steamer "Nabil Z" is concerned, nobody knows it unless it has sunk in the water. On such sinking of the ship, the person concerned later on found that it was manufactured in 1965 and its registered owner was Bluebay Enterprises, S.A., port of registry was Phnom-Pengh, the builder of the ship was Neptune, Rostock, Germany. Hunter Shipping & Trading who are the shipping agents have issued certificate on 22.10.01 at Chennai City regarding "Nabil Z", which sunk on 16.10.01 about 15 miles off Mokha (Yemen) and all cargo was lost as per Owners/Managers information received on 16.10.01. The said certificate is at page 82 of the compilation. The point is that if the vessel would have reached the Chennai Port without any damage or loss, the question of seaworthiness or age of the ship would not have arisen.

21. While reading the authorities cited by Mr.S.Shah L.A. for the respondent no. 2 which are mentioned above, it appears that when the bank guarantee or letter of credit is issued, the compliance thereof must be strictly carried out unless only a strong prima facie case of fraud is made out. He further submits that the

fraud committed at the execution of contract or after the execution of contract is not relevant. Therefore, the payment must be made by the issuing bank to the seller of the goods.

22. The disputes of the banks must be free from interference of the Court but it has two exceptions i.e. (1) in case of fraud committed in connection with such bank guarantee or (2) causing an irretrievable injury or injustice to one of the parties concerned. If we examine the present case, if we allow the bank L.C. to be encashed, that might cause irretrievable harm to the appellant-purchaser of goods in India to the effect that if the payment is made by the executing bank to the seller of the goods i.e. the respondent no. 2-herein, which is not still made in this case, the issuing bank of L.C. will have to file a suit against the buyer of the goods who have not received the goods, who in turn will have to recover the amount from the seller of the goods and accordingly multiplicity of proceedings will take place. I am of the opinion that in view of the fact that no payment is made by either bank to anyone, if the court taking up the matter is ordered to take up the suit expeditiously, the purpose would be served by issuing injunction against the issuing bank from making the payment of L.C. Fraud is played be one of the respondents except the bank and who played the fraud is also a question to be decided by the trial Court.

23. From the facts of the case also, it is crystal clear that while receiving the papers from the negotiating bank, the issuing bank found certain discrepancies for which clarification was sought by informing the negotiating bank and till that period, the question of making the payment does not arise. Moreover, the payment was to be made within 45 days and therefore also in that period when fraud or irretrievable loss has come to light, then this court should not order for making the payment of the L.C. amount and see that the fraud or irretrievable damage caused to the party may be brought on record.

24. Under the circumstances, I am of the opinion that in the facts of the case before me, the learned trial court judge has erred in not granting interim stay in favour of the appellant/original plaintiff. From the record, I am of the opinion that the appellant/original plaintiff has brought on record the case of fraud and irretrievable injury caused to it by producing the documentary evidence and therefore justice will be done if the injunction is granted in favour of the

appellant/original plaintiff from making the payment of L.C. to the respondent no. 2-M/s Chimmasheexport Ltd. till the suit is decided finally.

25. This A.O. is allowed. The order of the learned trial court judge dated 7.11.01 below exh. 5 in Special Civil Suit no. 906/01 is hereby quashed and set aside. The respondent no. 1 -I.D.B.I. bank is hereby restrained from making any payment of L.C. to the respondent no. 2 till the disposal of the suit. The trial Court is ordered to hear and dispose of the suit as expeditiously as possible but not later on six months from the date of receipt of the writ of this court. The parties are directed to cooperate fully with the court to dispose off the suit finally within the said time. Accordingly this A.O. is allowed with no order as to cost. Notice discharged. Status-quo granted earlier is vacated. In view of this order in A.O., no order in C.A.

(SHARAD D DAVE, J)

srilatha

After the order was pronounced, Mr.Nehal Gandhi L.A. for Mr.S.S.Shah L.A. for the respondent no. 2 stated that they want to challenge the order of this Court before the higher forum and therefore six weeks time may be granted. In my opinion, 4 weeks' time is sufficient to approach the higher forum. This order is therefore stayed till 28.2.02. In the meantime, I.D.B.I. Bank Ltd.-respondent no. 1 herein is restrained from making the payment to the respondent no. 2.

31/1/02 (SHARAD D DAVE, J)